ADDENDA & MUTANDA,

Lev Lib

In the Late

DEFENCE

OF THE

MARRIAGE

OF AN

UNCLE with his NIECE

Being the

Daughter of the Half-Brother

BY THE

FATHER's SIDE.

By the Author of that Defence.

LONDON, Printed *Anno Dom.* 1686.

Addenda & Mutanda,

In the late

Defence of the Marriage

OF AN

UNCLE with his NIECE,

ing the Daughter of the Half-Brother by the Father's Side.

PAge 20. And they take no manner of notice under the second of these Heads——of the Marriage of the Uncle with his Brother or Sisters Daughter.) This, I confess, is not very agreeable to what I have written in my *Resolution of Three Matrimonial Cases*, p. 3. Where, to prove that a Parity of Reason ought to be allowed in Matrimonial Prohibitions, I appeal to the Practice of the *Jews*; and I did it with reference to this very Case of an Uncle marrying his Niece, though it

appears the *Jews* have no where forbidden it: And the Reaſon of the Miſtake was, That in general I remembred very well, that the *Jews* did prohibit ſeveral Degrees, which are not expreſly ſet down in the Law of *Moſes*; and the Marriage of an Uncle with his Niece, ſeeming to me at that time, to have ſo exact a parity of Reaſon with that of an Aunt and her Nephew, though now I am unalterably of another Opinion, and I preſume, I have ſhewn very good reaſon for it; I took it for granted, without conſulting the particular Authorities which I there mention, and being in very great haſt, as will appear by comparing the date of my Reſolution, with the time when thoſe Queſtions were propoſed to me, which will appear by the Preface to thoſe Caſes, that the Marriage of an Uncle with his Niece was forbidden by the *Jews* themſelves.

P. 35. *Fratres patrueles, conſobrini, amitini*, &c. To this it belongs what my Lord *Vaughan* ſaith in his *Reports*. *Harriſon* and *Burwells* Caſe, *p.* 241. in the *Britiſh* names of Kindred my *Fathers Couſin German* hath the Appellation of my *Uncle*, and again in the very next Paragraph. *The word* Uncle *is an equivocal Expreſſion, and in ſeveral places ſignifies ſeveral*

ral Relations; as in the *Britiſh*, the *Father* or *Grandfathers Couſin German* is accounted an *Uncle* to the *Son*.——But this was for no other reaſon, but becauſe *Couſin Germans* in antient eſteem were look'd upon as *Brothers*, and unleſs when they expreſs it by a *Periphraſis*, the *Hebrews* have no one word to ſignifie a *Couſin German*, unleſs you will grant it to be included under the name of *Brother*, which as it belongs in its utmoſt latitude, to the Nation of the *Jews*, and then more reſtrictively to all of the ſame Tribe, the ſame Family or Kindred, ſo next to its moſt narrow and proper acceptation, it belongs moſt peculiarly to a *Couſin German*, eſpecially when the Declarative Circumſtance is added, of his being *born abroad*.

P. 39. The *Jews* interpret this place of two real and proper *Siſters*, &c.) That is, the *Rabbinical Jews*, for the *Karraites* underſtand it as I do, as a prohibition of *Polygamy*, and in this they are followed by *Franciſcus Junius* and his Fellow-Partner in the Tranſlation of the Bible *Emanuel Tremellius*, a converted *Jew*.

P. 42. This was not at firſt deny'd to Clergy-men themſelves) this is thus far true, that being married before hand, did not hinder a Man from entring into Holy

Orders, but after he was once entered, he could not Marry, though I confeſs, I did not conſider this when I wrote this Paragraph, but this is an Obſervation, though natural from the Premiſes, yet foreign to our purpoſe; and it is no matter as to this particular buſineſs, whether it be true or no.

P. 48. That Marriage cannot be divorc'd by virtue of any Law——— which is neither expreſly forbidden in it ſelf, nor ſtands in the ſame rational parity with that which is) This is no more then what my L. C. J. *Vaughan* ſaith in the Caſe already mentioned, *p.* 209. *If Marriages neither prohibited* in terminis *in* Leviticus, *nor being in the ſame Degree with a Marriage there prohibited, ſhould be unlawful, there would be no ſtop or* terminus *of unlawful Marriages.*——— Now I have proved undeniably, That the *Uncle* and *Niece* is really a Degree lower, when we ſpeak of Marriage, than the *Aunt* and *Nephew*: And beſides, ſuppoſing the Marriage of the *Uncle* and *Niece* had been forbidden expreſly, or by juſt and lawful Conſequence, as it is by neither; yet here there would two other Queſtions have ariſen: Firſt, Whether the Prohibition did equally extend to the *half* Blood as the *whole*? And this St. *Ambroſe*, tho' otherwiſe

wiſe a rigid Man in theſe Caſes, ſeems to have doubted very much; at leaſt, he would not abſolutely pronounce the *Half Blood* to be unlawful, in the Caſe of an *Uncle* Marrying *ſuch* a Niece; but he ſaith of it, *Hic autem gradus tertius eſt, qui etiam jure civili a conſortio conjugii exceptus* videtur; doubting, as it ſeems, within himſelf, whether the Obligation of that Civil Law, which forbad the Marriage of the *Siſters Daughter*, did extend ſo far as to the *Half Blood* or no, and much more to the Half Blood by the *Father's* Side, which was the Caſe of *Paternus* his Son. And from hence the ſecond Queſtion ariſes, Whether the Half Blood by the *Father's* Side, be not ſtill a Degree or a Remove further than the Half Blood by the *Mothers*? And this Queſtion, after what I have ſaid concerning it, I leave to the Adverſaries of this Cauſe to determine for themſelves; and if notwithſtanding that the Marriage of the *Uncle* and *Niece* is not forbidden any otherwiſe than by a *Parity* betwixt that and the Marriage of an *Aunt* with her *Nephew*; and if *this* Parity be *no* Parity at all, no more than Even and Odd are *paria* to one another; if beſides this Diſparity, which I have ſhown to be threefold in the firſt Caſe, there be likewiſe a twofold Diſparity

arising from the Half-Blood, he must needs be a very hardy Man, that in the face of *five* good Reasons against his Assertion, will still pretend to say the Case is the *same*. At this rate of arguing, any thing may be inferr'd from any thing, and we may say very safely and assuredly with my Lord *Vaughan*, That *there will be no stop or* terminus *of Unlawful Marriages*. And in another place, to assure this Point the more effectually, the same *Reverend* and *Learned* Justiciary saith, *We take the Degrees of Marriage, prohibited by God's Law, to be the* Levitical *Degrees* expressed, *or* necessarily implied by *Parity* of Reason, or *a fortiori*.

240. *ib.*

P. 54. The Argument of St. *Ambrose* against the Marriage of the *Uncle* with his *Niece*, presses the hardest of any other upon us.) My Answer to this Objection of St. *Ambrose*, to the best of my understanding, would not be unsatisfactory, tho' it had been the Niece by the Whole Blood, as it was not. But this was *Man*'s Case in *Crook*'s Reports, who for Marrying his *Wives Sisters Daughter*, which is a *Niece* in Affinity, was by the High Commissioners divorced, upon this Reason, because Degrees more remote * were forbidden, tho' they confessed themselves at the same time,

ut supra p. 247.

That is, in Affinity.

time, that it was not prohibited within the *Levitical* Degrees; and for that Reaſon, upon the Suit of the Plaintiff, a Prohibition and Conſultation was granted; but the Iſſue of it cannot be found upon Record. ib. p. 24

After this, in the time of King *James* the Firſt, (for the former Caſe was in the Reign of Queen *Elizabeth*) there was ſuch another Caſe of one *Richard Pearſon*, wherein a Prohibition was granted out of the *Common-Pleas* Court, for Marrying his *Wives Siſters Daughter*; and it was reſolved by the ſaid Court, upon conſideration of the Statute 32 *H.* 8. *c.* 38. That *the Marriage was not to be impeach'd, becauſe declared by the ſaid Act to be good, in as much as it was not prohibited by the* Levitical *Degrees.* Which Determination of the Judges of that Court, at that time, muſt of neceſſity proceed upon one of theſe two Suppoſitions; either that our Law had no regard to *Parity* of *Reaſon* in theſe Caſes; or, that there was indeed *no Parity* betwixt the Marriage of an *Aunt* and *Nephew*, and that of a Man's marrying his *Wives Siſters Daughter*, which is his *Niece* by *Affinity*. But now, ſince *Conſanguinities* and *Affinities*, by the *Levitical* as well as *Civil* Law, are the *ſame*, and *equally* forbidden to the *ſame* Degrees, it follows, ib.

That

That if in the Judgment of our Law, the Marriage of the *Wives Sisters Daughter* shall stand good, so shall that likewise which is Consummated with her who is *Daughter by the Half-Brother on the Father's Side.* And indeed, the *Half Blood* by the more *uncertain* and *imperfect* Side, makes it still come nigher to *Man* and *Pearson's* Case, and makes it rather an *Affine* than *Consanguineous* Relation.

Furthermore, in the Case of *Harrison* and *Burwell* it self, *Harrison* had Married his *Great Aunt*, the Widow of *Abbot* his *Grandfather's Brother*; and my L. *Vaughan* declares this Marriage to be valid, *p.* 207. And this Case, by the (*a*) King's Command, being referred to the Opinion of all the Judges of *England*, (*b*) the Chief-Justice delivered their Opinions, and accordingly Judgment was given, That *a Prohibition ought to go to the Spiritual Court for the Plaintiff.*

(a) *Hil.* 11 *Car.* 2.

(b) *Trin.* 12. *Car.* 2.

Now there is nothing more clear, than that the *Aunt* is *expressly* forbidden to the *Nephew* in Marriage; and for this Reason, which the Law assigns, *She is thine Aunt*, thy *Senior*, thy *Superior*, and, in Construction of Law, *Parentis loco.* All which do hold as well, tho' not so immediately, and indeed the two first much more strongly, in the

the *Great Aunt*, than in the *Aunt* at the first remove. As the *Jews* in their prohibitory Tables do forbid by Analogy of Reason, as they conceive, not only the *Wives Mother*, which is expresly forbidden, *Levit.* 18. 17. but also her *Grandmother*, the one being look'd upon *Parentis loco* as much as the other, though not so immediate as the other is; but the Law of *England* proceeding only by the *Letter*, without any regard, or at least very little to *Parity* of Reason, (for the Marriage of the *Daughter* and the *Whole Sister* are not inferr'd to be unlawful by a *Parity*, but by a manifest *Superiority* of Reason) would not disanul the Marriage of the *Great Aunt*, though the *immediate* were *so expresly* forbidden.

V. Seldem Ux. Hebr. L. 1. c. & de ju Nat. & Gent. L. c. 10.

And to shew yet further, That our Law in *Matrimonial* Cases do's not proceed by *Parity* of Reason, at least where that *Parity* is so *obscure*, and so *many ways* defective, as it is in our Case; there are two passages of the same Judge *Vaughan* in his Report of the aforesaid Case of *Harrison* and *Burwell* which are very well worthy our notice and observation; the first is, where speaking of the Act 32 *H.* 8. *c.* 38. he saith, *p.* 211. *Those words*, God's Law except, *must refer to such other Marriages*

as

as by Gods Law might be impeach'd, and not to any for conſanguinity or affinity, for had not thoſe words been, the generality of expreſſion, no Marriage ſhall be impeach'd without the *Levitical* degrees, *had excluded the impeaching Marriages for plurality of Wives or Husbands at a time, for Impotency, and for Adultery, as Sir* Edward Coke *obſerves, at the end of his Comment upon this Statute in his ſecond Book of Inſtitutes.*——Adultery and Polygamy are both of them forbidden by the *Levitical* Law, but when we ſpeak of the *Levitical Degrees* of Affinity and Conſanguinity, they cannot properly be referred to them, and the ſenſe of theſe two *Reverend* and *Learned* Gentlemen is this, that though Adultery, Polygamy, and Impotency are warrantable Cauſes of Divorce according to *Gods Law*, yet if the Act of Parliament had not mentioned *Gods Law*, but only inſiſted upon the *Levitical* degrees, there could no Divorce have enſued, by the Law of *England*, which keeps it ſelf moſt ſtrictly to the Letter, in any of theſe Caſes.

The other Paſſage which I aim at is this; where ſpeaking of the Acts of Parliament 25 & 28 *H.* 8. concerning the Succeſſion, wherein the *Matrimonial* Prohibitions

hibitions are limited and declared from the *Levitical* Law, he ſaith thus, *p.* 216. *The Marriages particularly declared by the Acts to be againſt God's Law, cannot be diſpens'd with; but other Marriages, not by the Acts declared in particular to be againſt God's Law, are left* ſtatu quo prius, *as to Diſpenſations with them:* that is, ſo far as concerns the *Levitical* Degrees, they may be, and are actually diſpenſed with; not by the *Pope*, whoſe Power of Diſpenſation was now aboliſh'd and abrogated for ever; nor by any *Prieſtly Abſolution*, which accounts only for what is paſt, but cannot make any thing lawful *de futuro*, which either the Law of God or Man makes null and void: but by the *Law it ſelf*, which by not prohibiting ſuch Marriages, hath made them Lawful.

It is true indeed, there are other Bars to Matrimony, beſides the *Levitical* Degrees, which are included in the Act 32 *H.* 8. *c.* 38. under the general Term of *God's Law*, as hath been already obſerved: But yet my L. C. J. *Coke* was of another mind, he underſtanding *God's Law* and the *Levitical* Degrees, to be only Terms declarative of one another. And in this Interpretation he ſeems to be favoured by the Words of the Act of Parliament, 28 *H.* 8. *c.* 16. *Cok. Lit. F.* 235. *a.*

c. 16. whereby it is Enacted, That *all Marriages ſolemnized within this Realm—— which be not prohibited by God's Law, limited and declared in the Act made this preſent Parliament, for eſtabliſhing the King's Succeſſion, or otherwiſe by Holy Scripture, ſhall be lawful and effectual by Authority of this preſent Parliament.* Where there is no Queſtion but by *God's Law* and the *Levitical Degrees limited, and declared* by that Act of Parliament, as alſo by another before it, in the Twenty fifth of the ſame King, the ſame thing is to be underſtood; but when it is added, *or otherwiſe by Holy Scripture*; it is imply'd by this, that there are other barrs to Matrimony beſides the *Levitical* Degrees: Yet notwithſtanding, when in the Act 32 *H.* 8. *c.* 38. *God's Law* is only mentioned, without the inſertion of that other Clauſe, *or otherwiſe by Holy Scripture*, we muſt either ſay, that the Parliament at that time had not ſo great a deference and regard to Holy Scripture, as when the former Act was made, or elſe, that under the comprehenſive terms of *God's Law*, not only the *Levitical Degrees*, but *all Scripture* in general is included, and this is certainly moſt reaſonable to believe, the Deſign and Intention of all theſe Acts of Parliament being only to reduce the *Matrimonial*

trimonial Prohibitions, and the cauſes of Divorce to the Standard of God's *Revealed Will*, and to evacuate, annul, and diſappoint the Encroachments and Uſurpations of the *Canon* Law; ſo that in this I agree perfectly with *Vaughan* againſt *Coke*, but this do's not properly concern our Caſe, for it is the *Levitical Degrees* and they only to which we are to appeal.

I wiſh my Lord *Vaughan*, as he diſagrees with *Coke* in this particular, in which we are not concerned, ſo in another in which we are, he had not diſagreed with himſelf. For notwithſtanding, in what hath been cited out of him above, he do's ſo plainly intimate, that we are not to ſtrain the *obligation* of theſe Laws beyond the *Letter* of them; yet, *p.* 216. he ſays, *No degrees being mentioned in the Statute to be prohibited by God's Law, but thoſe which are expreſs'd, it cannot thence be concluded, that the Statute intended no other than thoſe to be prohibited by God's Law, for take the words at moſt advantage for the purpoſe*, viz. Since many inconveniences have fallen by Marrying within the Degrees prohibited by God's Law; that is to ſay, the Son to Marry the Mother, the Brother the Siſter, &c. in the ſame manner is it, if a Statute ſhould ſay,

Since

P. 217. *Since many inconveniencies have happened, by doing things prohibited by the Kings Laws*; that is to ſay, *by depopulation of Farms, by ſubſtracting of Tithes*, &c. It would not be concluded that the things ſo enumerated were all the things prohibited by the Kings Laws.

For, beſides that this ſeems to be a flat Contradiction to what he had ſaid before,

P. 216. That *all Marriages particularly declared by the Acts to be againſt God's Law, cannot be diſpenſed with; but that all others may*; or in Words to that effect; the Caſe is not the ſame in theſe two ſeveral Examples: For, when we ſpeak of *Levitical Degrees* prohibited by *God's Law*, and then enumerate all the ſeveral Particulars, as they are ſet down in *Leviticus*, than which there are no more Particulars of Prohibited Degrees any where to be found in Scripture, in this Caſe *God's Law*, and the *particular* Branches of it thereafter expreſs'd, being taken *all together*, are co-extended to one another. But when we ſay, *Whereas many Inconveniencies have happened, by doing things prohibited by the King's Laws*, that is to ſay, *&c.* inſtancing in three or four Particulars only; it is manifeſt, that the *King's Laws* are abundantly of *greater latitude* than the *Particulars* that

that follow. But yet the words, *That is to ſay*, in both Caſes refer only to the Particulars thereafter expreſſed; and if there be any other things prohibited by the *King's Laws*, which are not expreſſed and enumerated in theſe Particulars, the abſtaining from ſuch forbidden Practices as thoſe, is not bound upon us by vertue of this Law, but by the particular Sanctions of other reſpective Laws, wherein thoſe Offences or Enormities are forbidden: For it would be a ſtrange thing for a Man to be hanged for *ſtealing an Horſe*, by virtue of a Law which puniſhes the *Non-payment of Tythes*. How can thoſe words, *That is to ſay*, be referred to thoſe Particulars which are *no where ſaid* or *expreſſed*? or the words *before-rehearſed*, or *above-expreſſed*, to thoſe which are *no where rehearſed*, or *expreſſed*? I do not ſay that a *Parity* or *Superiority* of reaſon is not to be admitted, but I ſay the words of a Statute, which is the Statute-Law, will extend no further than themſelves, and in what inſtances this *Parity* or *Potiority* of Reaſon lies, belongs to a Court of *Conſcience*, or of *Equity* to determine, but then theſe Inſtances are not referr'd to by the Words, *that is to ſay*, or by the Words *afore-rehearſed* or *above expreſſed*, which belong only to the *naked Letter* of the

Law, but they are pointed at by the *Inſtances themſelves*, as thoſe *Inſtances* by *Parity* or *Superiority* of Reaſon do point at *other* Inſtances that are not mentioned; as for example, When it is forbidden to Marry the *Half-Siſter*, this evidently darts a Prohibition upon the *Whole-Siſter* likewiſe, becauſe the *Whole-Siſter* is *really* the *Half-Siſter* and *ſomething more*; and when it is forbidden for a Man to Marry his *Grandchild*; this points ſtill more ſtrongly upon his *Daughter*: for, if the *Grandchild* be forbidden for the ſake of the *Daughter*, as there is no queſtion that is the reaſon, the *Daughter* is much more forbidden for her *own* and her *Father's* ſake, and for the ſake of the *Grandchild*, who is for her ſake expreſly forbidden at a further remove: But if where there is neither an *expreſs* Prohibition, nor ſo much as a *Parity* of Reaſon, we will ſuppoſe a Law, notwithſtanding to oblige, which is exactly our Caſe; we may as well extend the Prohibition *in infinitum*, ſo that there need have been but one Prohibition of Marriage, and that would effectually have barred all other Inſtances that can be ſuppoſed, for where a Prohibition ſtops not with *Parity* of Reaſon, what *other* Limit or Boundary can we ſet?

Neither

Neither let any Man take ſhelter in Archbiſhop *Parker*'s Matrimonial Table, which being firſt publiſh'd in 1563. was afterwards in the Year 1603. among many other Canons of a Convocation held that Year, being 1 *Jacobi* 1. ratified, confirmed and allowed under the Broad Seal of *England*, in which *Matrimonial* Table among other Prohibitions the Marriage of an *Uncle* with his *Niece* is forbidden.

For this Table was made with an unqueſtionable reguard to the *Levitical* Prohibitions, and it was upon ſuppoſition of a *Parity* of reaſon betwixt the Marriage of an *Uncle* with his *Niece*, and that of an *Aunt* with her *Nephew*; that the former of theſe was prohibited in that Table, notwithſtanding it be not expreſly mention'd in the Law of *Moſes* it ſelf, but now ſince I have ſhewn plainly that there is *no* ſuch Parity of Reaſon as is pretended, the Table cannot prohibit ſuch Marriages any longer, unleſs the Act of Parliament muſt give place to the Table: For by the Act of 32 *H.* 8. *c.* 38. it is expreſly ordained, that, *No Reſervation or Prohibition, God's Law except, ſhall trouble or impeach any Marriage without the Levitical Degrees*; and what thoſe Degrees are, appears by 28 *H.* 8. *c.* 16. wherein thoſe Degrees are

ſaid to be *limited* and *declared* in the Act made for eſtabliſhing the Kings Succeſſion, which is, 28 *H.* 8. *c.* 7. wherein the Degrees expreſly mentioned and ſet down in *Leviticus* are expreſt, and none other; and if we add any other, but what are *included* in the Degrees mentioned, either by *Parity* or *Potiority* of Reaſon, there can be no end of Prohibitions while the World ſtands, but they may be heap'd and piled *in infinitum* upon one another, without any other Authority to make them good, then what either prejudice or fancy ſhall create. I demand therefore, if the Marriage Table had quite altered the Degrees mentioned in *Leviticus* and ſubſtituted others in their ſtead, whether it would have obliged or no, notwithſtanding the Act of Parliament expreſly ſaith, that, *No Reſervation or Prohibition, God's Law except, ſhall trouble or impeach any Marriage without the Levitical Degrees*, which Degrees by another Act are *limited* and *declared*, as aforeſaid? I believe no Man will be found ſo hardy as to take upon him the Patronage of this Doctrine, and ſince the reaſon is the ſame in all, there can be no Prohibition in any one Caſe, (and conſequently not in ours neither) where the Law of *Moſes* allows a Diſpenſation

P. 58

P. 58. And all ſuch Marriages were pronounced Valid) It is true, this Act of Parliament, ſo far as concerns Precontracts was repealed 2 *Ed.* 6. 23. and that Repeal confirmed 1 *Eliz.* 1. but it was for the greater inconveniences which were found by experience by nulling of real Contracts, then by pretending of Contracts, where there were really none, which was the reaſon of the Act in *Henry the Eighth*'s time, and is a plain inſtance in both Caſes, for the Repeal was not founded upon Right but Convenience, that Laws in many Inſtances do not ſo much regard, *Quid fieri jus faſque ſit*, as *Quid expediat, vel interſit Reip. ut fiat, vel non fiat.*

P. 72. Being only the half Siſter by the Father's ſide) the Daughter of the *Half-Brother* by the *Father's* ſide, which is a *double* Paternal Conſanguinity, ſo that our Caſe is more favourable than that of St. *Ambroſe*, which made him notwithſtanding heſitate a little, in ſpite of all his Rigour and Severity in theſe matters; I ſuppoſe no Man will ſay, that the *Half-blood* and the *Whole* are the ſame; and *Abraham*'s Caſe with reſpect to *Sarah* his Wife, is an unanſwerable inſtance for the *Fathers* ſide, that it is more favourable and more

allowable in Marriage than the *Mothers*.

Ib. Cannot without Ignorance or Wickedneſs, and in either Caſe without palpable injuſtice be vacated or diſſolved) This ought not, and, I hope, it will not be interpreted as any diſreſpect to any Court of Juſtice, for I honour the Seats of Juſtice with all my Heart, and will do as much as any Man to the utmoſt of my Power to aſſert their juſt Authority and Reputation, for as much therefore as I am given to underſtand that there is a Sentence paſſed in this Cauſe to the prejudice of the parties in in whoſe behalf I have pleaded, I do hereby declare, that theſe Papers were written a good while before the paſſing of that Sentence, and that they were actually Printed before it was poſſibly for me to know any thing of it, beſides that a wrong Sentence may ſometimes be pronounced not only by an Upright Judge, but a Wiſe and Learned one too.———

ΈΠΙΜΕΤΡΟΝ.

AN ADDITION

Of ſome other CONSIDERATIONS

Not hitherto ſuggeſted.

FIrſt, As to the Half-Blood, the *Talmudical* Doctors were of opinion, that though it were forbidden for a Man to Marry his *Brother's Wife*, in any Caſe but only where the Brother died without Iſſue; yet this was to be underſtood only of the Brother by the *ſame* Father: but that it did not hold in the *Frater Uterinus*. Which Opinion of theirs was founded upon this Reaſon, That the Inheritance, which was the Reaſon of ſuch Marriages in default of Iſſue, did not deſcend from the Mother, but the Father; ſo that the Law of the *Leviratus* was not concerned

Selden Ux. Hebr. L. 6. 2.

concerned in the Case of a *Frater Uterinus*, who was reputed of another and a distinct Family from his *Half-Brother* by *another Father*, though the Mother on both Sides were the *same*. I confess, I am very clear and positive against the *Rabbins* in this: For whatever becomes of the Inheritance, it is certain, that in case of Issue, the Brother by the *Father*'s Side was forbidden upon account of *nearness of Kin*; but that *nearness*, for the Reason already mentioned more than once, is certainly greater in construction of Law on the *Mother*'s Side, than on the *Father*'s. But I bring this Determination of the *Rabbins*, whether true or false, to shew that they did not think the Half-Blood so sacred, and so indispensably prohibited as the Whole; and that the Half-Blood on one Side may possibly in some Instances be more severely prohibited than the other: And if this Doctrine will hold in any Case, it will certainly in ours, the Father's Side being certainly, as to Legal Construction, the weaker Consanguinity of the two.

Hill and Good's C. p. Secondly, Though my Lord *Vaughan*, in *Hill* and *Good*'s Case, be very inconsistent with himself, if we compare him with himself in *Harrison* and *Burwell*'s, where he speaks very favourably of the Marriage

Marriage of a Man with his *Wives Sisters Daughter*: for in this latter Case of *Hill* and *Good*, citing all the same Precedents he had done before, he concludes, *By all these Cases, the Marriage of the Husband with his Wives Sisters Daughter, is a Marriage prohibited within the Levitical Degrees, for nearness of Kindred to the Wife*: Yet afterwards he makes us a sufficient Amends, if a flat, positive, and deliberate Contradiction can do it. For within a very few Pages afterwards he puts the same Case, and resolves it as follows. *A Man before the third of* November, 26 H. 8. *by Dispensation from* Rome, *had married his Wives Sisters Daughter, which Marriage was prohibited by the Canons of the Church; and no Divorce had been attempted in the Case, until after* 1 Eliz. *and the Reviver of the Statute of* 28 H. 8. c. 16. *which made void all Dispensations from* Rome. ib. p. 326.

It is plain, that this Marriage being not prohibited by God's Law, limited and declared in the Act of 28 H. 8. c. 7. *was by the express Words of the revived Act of* 28 H. 8. c. 16. *a Marriage to continue good without Separation, notwithstanding all Dispensations from* Rome *were null'd; because it was no Marriage excepted out of the Grace intended to be given by that Act to the*

King's

King's Subjects Married by Diſpenſation before November *the third*, 26 H. 8. *and not then ſeparated.*

And now from this Determination of my Lord *Vaughan*'s, the Inference is plain, That our Caſe muſt ſtand *a fortiori*: For *Conſanguinities* and *Affinities* in theſe Caſes are the *ſame*, and prohibited to the *ſame* Degrees; a Man and his Wife are all one; and his *Wives Siſter*, as to this Particular, is the ſame with his *own*; and *her Daughter*, the ſame with *his Conſanguineous Niece* by the *Whole* Siſter; which if it be determin'd lawful, the Daughter of the *Half-Brother* is much more, the *Half-Blood* and the *Paternal* Conſanguinity taken together, making the Caſe more favourable by *Four* to *One*, which is the exact Proportion.

Thirdly, Though it be true what I have affirmed, That the *Talmudiſts* or *Traditionary* Doctors are agreed in permitting the Marriage of an *Uncle* with his *Niece*, and this as far off as the time of *Joſephus*, and probably a great deal longer; yet the *Karraites* or *Scriptuary Jews* forbid it, as well by the *Brother*, as the *Siſters* Side, conceiving it, as I ſuppoſe, to be included by Parity of Reaſon: But this is ſo far from being a Prejudice to our Cauſe, that it is the

the greateſt advantage it can poſſibly receive, for it is abſurd to think that the Δευτερωταί, the *Miſnical* or *Traditionary Jews* were ignorant of this Opinion of the *Karraitiſh* Faction, and therefore their determination in this caſe did not proceed out of *heedleſneſs* or *inadvertency*, as it is found to have done in many others, but was certainly grounded upon *one* of theſe *two* bottoms, either that *Parity of Reaſon* was not to be regarded, and that, according to Antient Tradition, it did not indiſpenſably oblige their Forefathers, who upon Prudential Conſiderations aſſumed a latitude and liberty to themſelves, either of entring into ſuch Marriages, or abſtaining from them; or elſe, that there was indeed *no Parity* in this Caſe, as certainly there is not, and much leſs in the *Half-blood*, and the *Half-blood by the Fathers ſide*; and though I am no great friend to the *Traditions* of the *Jews*, which in many caſes are monſtruouſly fabulous and impertinent, yet where a Tradition hath reaſon to aſſert it, this is a great Argument of its Truth and Credit, and the Reaſon and Tradition do reflect upon each other a mutual Authority and Reputation.

Fourthly and *laſtly*, Though Archbiſhop *Parkers*

Parkers Matrimonial Table were confirmed by Authority of a Convocation in the Second of King *James* the First; yet it is to be considered, that the power of such Assemblies, and Synods of the Clergy, and the Validity of what they shall determine is founded upon 25 *H.* 8. *c.* 12. and in that Act there is this provision made; *Provided alway, that no Canons, Constitutions or Ordinances shall be made or put in execution within this Realm, by Authority of the Convocation of the Clergy, which shall be contrariant or repugnant to the Kings Prerogative Royal, or the Customs, Laws or Statutes of this Realm.* Wherefore all the Question is, whether this Marriage be against the *Law of God,* as I think I have abundantly proved that it is not, and upon supposition that I am in the right, the *Matrimonial* Table, as to this particular Prohibition is of no manner of force or obligation, because the Statute of 32 *H.* 8. *c.* 38. expresly says, That *no Reservation or Prohibition, Gods Law except, shall trouble or impeach any Marriage.* And this is all I have to say, only since there is a Sentence of Divorce already past in this Cause, I would humbly recommend it to those before whom the final determination of this Controversie shall lie, that they would reflect upon

upon our *Saviours* injunction in Caſes of this Nature, *whom God hath joyn'd*, (as he hath joyned all thoſe who being actually Married, are not antecedently by his Law forbidden to Marry) *let no man put aſunder*, and that in the Judgment they ſhall give upon this Caſe, they would ſet the great Judge of Heaven and Earth before them as a Pattern, who hath told us not only for our inſtruction, but imitation too. Ἔλεον θέλω καὶ ὐ θυσίαν, *I will have Mercy and not Sacrifice, and that in the midſt of Judgment he remembers Mercy.*

FINIS.

ΛΕΙΨΑΝΑ ΠΑΡΑΛΕΛΕΙΜΜΕΝΑ

Reliquiæ Secundæ.

I Did believe upon the Writing of my laſt Paper that I had exhauſted the Argument which was the Subject of it, but upon further enquiry I find I have not, and there is further to be added, to what I have ſaid already, as follows.

Firſt, Learned Men are divided in their Opinions, whether the Prohibitions in *Leviticus* are *Natural*, that is, founded and rooted in the Law of Nature, or in the Natural and Eternal Reaſon of things, or whether they are purely *poſitive* and no more. Of the *firſt* ſort is *Lyranus*, *Abulenſis*, *Bonfrerius*, *Maſius*, *Montanus*, and *Nicholas Serarius*, and among the Reformed Mr. *Calvin*; of the *latter* is *Paulus Burgenſis*, *Cajetanus*, *C. a Lapide*, *Sanchez*, and the Authors by him cited, *Tirinus*, *Lorinus*, *Menochius*, and *Magalianus*, and among the Reformed three great Authorities, *Druſius*, *Epiſcopius*, and our Learned

Biſhop *Taylor*; as for mine own Opinion, I muſt confeſs, that I incline rather to the Sentiments of the *former*, but they that think with the *latter*, that the Obligation of theſe Laws is *poſitive and no more*, they have no pretence for a Diſſolution of this Marriage, becauſe in Laws *meerly poſitive* there is no ſuch thing as *Parity* to be admitted, ſuch Laws being all of them a manifeſt reſtraint upon the Natural Liberties of Mankind, and therefore ought not to be ſtrained by Parities, and Interpretations, whether true or falſe, beyond the Letter of them.

Secondly, As to my Interpretation of the Phraſe of *Dying Childleſs*, it is confirmed by the Authority of the Learned Jeſuite *Stephanus Menochius*, who in his Comment upon that place, hath theſe remarkable Words to the very ſame Senſe with mine, *Hi inceſtuoſi non ſinentur in hoc ſcelere permanere donec liberos habere poſſint, ſed occidantur*, and this, when all is done, is the true meaning of the Text, though the *Jews* who are horribly unskilful in the remote Antiquities of their own Nation have deviſed other fanciful Gloſſes which will not abide the teſt of a judicious enquiry, and that we may not wonder at this ſeverity of puniſhing all Inceſtuous Con-

Conjunctions with Death, *Paulutius Forojulienſis* refers it as he very well might, beſides the Reaſon I have given, to the Arbitrary diſpoſal of Almighty God, who may annex what Sanction he pleaſes to his Laws, or, which is all one, to ſome Impulſive Cauſe or Motive which he hath not thought fit to reveal, ſo that with reſpect to us it is Arbitrary, let it be what it will in it ſelf, where ſpeaking of Congreſs with a Menſtruous Woman being puniſhed with Death, he ſays, *Multa alia quæ non ſunt peccata mortalia puniebantur pœnâ mortis ex aliquâ cauſâ legiſlatorem movente, ut eſus Sanguinis.*

Thirdly, When it is ſaid, *Levit.* 18. 6. *None of you ſhall approach to any that is near of kin to him, to uncover their Nakedneſs.* It is to be obſerved, that this *nearneſs of kin* is to be meaſured not from *our ſelves*, but from the *Fountain* of Kindred, that is, from a *common* Father or Parent, as when it is ſaid in the Prohibition of the *Aunt* by the *Fathers* ſide, *v.* 12. *Thou ſhalt not uncover the nakedneſs of thy Fathers Siſter, ſhe is thy Fathers near Kinſwoman.* And again, *v.* 13. of the *Aunt* by the *Mothers* ſide, *Thou ſhalt not uncover the nakedneſs of thy Mothers Siſter, for ſhe is thy Mothers near Kinſwoman.* It is plain, that

though the *Niece* be at the *ſame* diſtance from me in the *deſcending* Line, that the *Aunt* is in the *aſcending*, yet when the *expreſs* Reaſon aſſigned in the Law, why I may not marry mine *Aunt*, is not becauſe ſhe is *mine*, but my *Father* or *Mothers near Kinſwoman*, this is ſo far from darting any Prohibition upon my *Niece*, that it is on the contrary, plainly favourable and propitious to a Marriage in that Relation; becauſe my *Niece*, who is my Fathers *Grandchild*, is plainly at a further diſtance from him than mine *Aunt* who is his *Siſter*; and that for two Reaſons, *Firſt*, Becauſe the one is an *immediate* Relation, but the other, by the interpoſition of a Son or Daughter betwixt, is a Relation at the *ſecond remove*; and becauſe no Man or Woman can get or bear Children by *themſelves* without the Conjunction of another, it is therefore only a Relation by the *half Blood*, and if it be the *Niece* by the Brother, there is not only the *Half Blood* to be conſidered, but that that *Half Blood it ſelf* is the more *weak* and *uncertain* Conſanguinity of the two, as hath been already frequently declared; ſo that if the *nearneſs* to my *Father* or *Mother* be the *expreſs* Reaſon aſſigned in the Law of *Moſes*, why I may not Marry mine *Aunt*,

no

no Man can with any ſhew of Reaſon infer from thence, that I am forbid likewiſe to Marry my *Niece*, becauſe the diſtance is manifeſtly greater from the *Fountain* of Kindred, and the Relation unqueſtionably *more imperfect*.

So alſo, when it is ſaid, *v.* 14. *Thou ſhalt not uncover the Nakedneſs of thy Fathers Brother, thou ſhalt not approach to his Wife, ſhe is thine Aunt.* Here there are three things manifeſtly imply'd, *Firſt*, That in the *Levitical* Prohibitions, *Conſanguinities* and *Affinities* are conſidered as the *ſame*, and are prohibited to the *ſame* Degrees. *Secondly*, That the Reaſon of her being forbidden in Marriage is becauſe ſhe is my *Brothers Wife*, that is, in Conſtruction of Law, my *Fathers Siſter* or *near Kinſwoman*; And *Thirdly*, As in the two former Caſes, that this is done out of reſpect and honour to my Father, with whom ſhe ſtands upon the ſame *Level* or *Horizontal Plane* in the *Scheme* of *Conſanguinity* or *Affinity*, ſo that to Marry mine *Aunt* is to make my *Fathers equal* my *inferiour*, and to ſubject her to the mean and ſervile condition of a Wife to whom I owe the Service and Honour of a *Parent*. And this is the true Interpretation of thoſe Words in this laſt place, *She is thine Aunt*;

for every Man knows without the help of *Revelation*, that his Fathers Brothers Wife is his *Aunt*; but there is manifestly included in them an intimation of her *Superiority* over us, by reason of her standing *equal* in the Table of Affinity with our Father or Mother, and therefore she ought not to submit to have her Nakedness uncovered by her *inferiour* and *dependant*, or put her self into a condition of *Subjection* to him, from whom she may expect and challenge the Duty, Service and Allegiance of a *Son*; and therefore the *Greeks* called the Uncle and Aunt by the names of θεῖος and θεία, alluding, as I suppose, in the use of these words to the Antient, Absolute and Arbitrary Power which all Parents had over their Children; so that as to all the instances to which their Power or Possibility of Action could extend it self, they were as absolute and unaccountable as God himself, and were his Vicegerents upon Earth in their respective Families, and the *Uncle* and *Aunt* were θεῖος and θεία, they had, as it were *Aliquid divini juris in liberos liberasque fratrum & sororum*, they had a right of Reverence, and a natural claim of Duty and Respect from their Nephews and Nieces, which were accounted but a remove from Children; and

and laid ſo great a weight upon all their Advices, Admonitions and Commands, that to diſobey them in any thing not very unreaſonable, was accounted an heinous Crime, although their Power of *Coercion* were not all out ſo great, as that of their natural and proper Parents.

And now from what hath been juſt now ſaid, it is plain, that the Reaſon of that Law by which the *Nephew* is prohibited to Marry his *Aunt*, being founded in theſe two things, *Firſt*, In *nearneſs of Kin*, which is greater to the *Father* in his *Siſter* than his *Grandchild*. *Secondly*, In the *ſuperiority* and *preeminence* of the *Aunt* over the *Nephew*, I ſay, it is plain that it cannot from *either* of theſe conſiderations be inferred by any *Parity* of Reaſon, that the Marriage of an *Uncle* with his *Niece* is forbidden, and with reſpect to the latter conſideration, the *ſuperiority* is not violated by ſuch a Marriage, but rather pleaſed and gratified by it, becauſe it ſtill continues where it was, that is in the *Uncle*, only by Marriage it is rendred *more* abſolute and perfect, ſo that unleſs *contraries* may by *Parity* of Reaſon be inferr'd from *contraies*, there can be no inference from the Prohibition of an *Aunt*, which ſhall debar or obſtruct the Marriage of a *Niece*.

Fourthly, It is certain, that *Amram* took to Wife *Jochebed* his *Fathers Sister*, and this could not be long before the giving of the *Law*, for of that Match *Moses* and *Aaron* and *Miriam* were descended; the thing is mentioned in more places than one of the Scripture without any manner of blame or reprehension, and we are not rashly to suppose Persons that were so highly honoured by God with a *Prophetick* Spirit, a gift of *Miracles*, a *Priestly Character* annexed for ever to the *Family* of the one, and a *Legislative Power* invested by God himself in the *Person* of the other, to have been Spurious or Illegitimate; from whence it follows, that whatever reasons of *Convenience* or *Interest* there may be to hinder such Marriages From being entred into, yet it was not a matter of *absolute* and *indispensable* Obligation till after the giving of the Law by *Moses*, and that if it had not been for the giving of *that Law*, it would have remained still in the same prudential indifference which it had before; for what is *once* lawful, must *always* continue so, till a supervening Law forbids it, and makes it unlawful; but if the Marriage of the *Nephew* to his *Aunt* were a Marriage good and valid before the giving of the Law by *Moses*, that of the *Uncle* to his *Niece* was much

much more, it being ſhewn in ſo many and various reſpects to be ſo plainly a more favourable Caſe, and therefore not being any where *expreſly* forbidden, it muſt continue ſtill as it was, *prudential* and *indifferent*, and conſequently *lawful*. For when reſtraints are lay'd upon *lawful* things, there is no inference from the prohibition of one thing to the prohibition of another by *Parity* of Reaſon, whether pretended or real, but the Prohibition ſtops within it ſelf, and extends no further than the Letter, as if part of a *Common Field* ſhould be *enclos'd*, and this *Encloſure* eſtabliſh'd and warranted by *Law*, there lies here no Inference by *Parity* of Reaſon for the Encloſure of the *reſt*, but what is not *actually* and *legally* enclos'd, is *common*, and muſt remain *open* as it did before.

Beſides, that *Moſes* by Gods appointment ſhould ſo ſeverely forbid the Marriage of an *Aunt* with her *Nephew*, a ſort of Marriage of which he himſelf and his Brother *Aaron* were deſcended, bringing by that means a ſort of *Aſperſion*, and ſomething that is, at leaſt, very like a *Reproach* upon himſelf and his Family, upon his Brother *Aaron* and the Family of *Prieſts* that were for *ever after* deſcended from his Loyns, and yet take no notice in the leaſt

of

of the Marriage of an *Uncle* with his *Niece*, in which he was not concern'd, but might have forbidden it without any manner of reflection upon himself or his Relations, if God had intended to prohibit them both alike, is a thing to me so incredible, that nothing can be more, and I presume it will appear so to every indifferent Person that shall reflect upon it.

Fifthly, There is also the Case of *Achsah* and *Othniel* in the Books of *Joshua* and *Judges*, in which, if we understand the Text so as that *Othniel*, who was the Son of *Kenaz*, shall be the *Half Brother* of *Caleb* by the *Mothers* side, for *Caleb* was not the Son of *Kenaz* but *Jephunneth*; then here is another Instance *after* the Law, of the *Uncle* Marrying his *Niece*, the Daughter of his *Half Brother* by the *Mothers* side; the Words of the Text are these, *Jos.* 15. 17. Othniel *the Son of* Kenaz, *the Brother of* Caleb *took it:* (Kirjath-sepher) *and he gave him* Achsah *his Daughter to Wife.* And again, *Judg.* 1. 13. Othniel *the Son of* Kenaz Calebs *younger Brother took it*, (Kirjath-sepher) which words in both places may either be so Interpreted, that *Othniel* had this double Relation, he was the Son of *Kenaz*, and he was likewise *Calebs* younger Brother by the *Mother*'s side, and

See also G. 3. 9.

then

then *Achſah* the Daughter of *Caleb* will be *Othniel's* Niece, and his Niece by a *nearer* Conſanguinity than that in the Caſe before us; or elſe, that *Othniel* was the Son of *Kenaz*, which *Kenaz* was younger Brother to *Caleb*; and ſo *Othniel* and *Achſah* will be *Couſin Germans*. Both of theſe Interpretations, if there were nothing elſe but theſe Words to be conſidered, are very natural and eaſie; but when I conſider that after the Death of *Caleb* and *Joſhua* the Children of *Iſrael* were made Captive by *Cuſhan-riſhathaim*, for the ſpace of Eight Years, *Judg.* 3. 8. that God raiſed up this *Othniel* to be their Saviour and Deliverer out of the Hands of this Oppreſſor, *v.* 9, 10. and that *the Land had reſt* afterwards under the Government of this *Othniel for the ſpace of forty Years*; no Man will ever think that *Caleb* and *Othniel* in that Age of the World could probably be the Sons of the ſame Mother, when it is ſo plainly demonſtrable, that there was at leaſt *Forty nine* or *Fifty Years* difference between their Ages, for to this *Fourty eight* we muſt add *one* or *two* more, becauſe before this period began they were both Cotemporary, and *Caleb*, if he were Brother to *Othniel*, was then the elder by a Year or two at the leaſt.

But

But this is not all, *c.* 2. 8. we have an account that *Joshua* dy'd, and *v.* 10. That *all that Generation*, of which *Caleb* was one, *were gathered to their Fathers*, and then, before this Revolution of *Cushan-rishathaim*, we have an account of several other Oppressions which the *Jews* for their many Sins and Provocations laboured under; so that the distance between the Age of *Caleb* and *Othniel* is still considerably greater than what hath been represented. It remains therefore, that *Achsah* and *Othniel* were *Cousin Germans*, that is, *Brothers Children*, who in their Circumstance might lawfully Marry, for it appears, that *Achsah* was an *Heiress*, otherwise her Father could not have given her the *Southland*, as he did, and added afterwards to it *the Upper and the Nether Springs*, all which, by the *Mosaick* Platform of Inheritance would otherwise have devolved upon the *Male Issue*.

If you ask how any Woman can be called an *Heiress* while her Father is yet *living?* I answer, That in strictness she could not yet be called by that name, there being *no* Inheritance necessarily devolved upon her, but her Father was now so old, that he was past the hope or expectation of any more Children: For at the first entrance of the Children of *Israel* into the

Wilderness

Wilderneſs, he was one of the *Heads* of the Tribes, *Numb.* 13. 6. and one of thoſe who together with *Joſhua* and others, *v.* 17. were ſent by *Moſes* to ſpy out the Land of *Canaan*; after this they remained in the *Wilderneſs* Fourty Years, and *Joſhua* who ſeems to have been much of the ſame Age with *Caleb*, ſoon after his entrance upon the Land of *Canaan* dy'd, being at his Death of the Age of *an Hundred and ten Years*, *Joſh.* 24. 29. *Judg.* 2. 8. And if we allow *ten* or *twenty* Years by which *Joſhua*, without any reaſon that appears, ſhall be ſuppoſed to be older than *Caleb*; the Age of *Caleb* at the Marriage of his Daughter *Achſah*, will be an Hundred or Ninety at the leaſt, wherefore being ſo old and unfit in Perſon to be at the Head of a Vigorous Aſſault, he propounds the taking of *Kirjath-ſepher* to ſome other with a reward, *He that ſmiteth* Kirjath-ſepher *and taketh it*, ſaith he, *to him will I give* Achſah *my Daughter to Wife*; not that any *one* Man could take a City or Town by himſelf, or that every Man was fit to Command a Party; or that the *Inheritance* which was to go along with *Achſah*, could be legally diverted from *Othniel*, who was the next *Heir Male* of that Family, only by theſe general words he propounds the Conduct of the Expedition

on to *Othniel* with Promiſe upon Succeſs, that he ſhould immediately be Married to his Daughter, which the Old Man during his Life time, was not obliged to permit, and have part of the Inheritance in hand before hand. And this is the true State of this Caſe, which though in it ſelf it be nothing to our purpoſe, yet there is an uſe that may be made of it, and that is this;

That it would be very ſtrange, if God had intended equally to prohit the Marriage of an *Uncle* with his *Niece*, as of an *Aunt* with her *Nephew*, not only that he ſhould no where expreſly prohibit the former of theſe, as he hath done the latter, but that the Holy Spirit in this particular Caſe of *Achſah* and *Othniel* ſhould ſpeak of the Marriage of *Couſin Germans* after ſuch a manner, that many, and thoſe very Learned Men too, have been induc'd to believe it was the Marriage of the *Uncle* with his *Niece*, for of this Opinion were moſt of thoſe whom I have already cited as Aſſerters of the *meerly poſitive* Obligation of the *Moſaick* Law.

Sixthly, and laſtly, Though I am far from diſputing the Kings Power in diſpenſing with a Statute in Caſes of neceſſity, of which he is the Judge, yet in ordinary Caſes he is never ſuppoſed to intend it, and

it is certain, that when among other Articles presented to him by the Convocation he gave his Royal Assent to the Matrimonial Table, in which the Uncle is prohibited to Marry his *Niece*, the Convocation themselves were of Opinion, that this Degree was some way or other prohibited by the Law of *Moses*, and the King agreed to this Prohibition among others, upon that supposition, but now since it appears so plainly, that this sort of Marriage was never actually forbidden by the Law of *Moses* nor so much as intended to be forbidden, either nothing but Gods Law can impeach any Marriage, and by consequence this cannot be impeach'd, or else an Act of Parliament may be Repealed by an Act of Convocation, which yet hath no Power to make any Laws or Ordinances whatsoever, but what the Parliament it self hath given it, and the Parliament can never be supposed to put a Power destructive of their very Constitution into the Hands of the Clergy met together in a Convocation; nay, they have expresly provided, with the Kings Royal Assent, who, without necessity, which cannot here be pretended, will never break his Word with his People, and then the breach of it is the truest Justice, that no Convocation shall exercise any such Power.

FINIS.

A N

Additional Advertiſement

Concerning the

HALF-BLOOD.

Deut. 13. 6. It is provided in caſe of Idolatry; *If thy Brother, the Son of thy Mother, or thy Son, or thy Daughter, or the Wife of thy Boſom, or thy Friend which is as thine own Soul, entice thee ſecretly, ſaying, Let us go and ſerve other Gods,* &c. v. 8. *Thou ſhalt not conſent unto him, nor hearken unto him, neither ſhall thine Eye pity him, neither ſhalt thou ſpare, neither ſhalt thou conceal him*; v. 9. *But thou ſhalt ſurely kill him; thine Hand ſhall be firſt upon him to put him to death, and afterwards the Hand of all the People.*

The meaning of this Law is, that Idolatry ſhould certainly be puniſhed with Death, let the Relation be never ſo nigh, or the Endearment and Friendſhip never ſo

great, as appears by thoſe Words, *Or the Wife of thy Boſom, or thy Friend which is as thine own Soul*; and when it is ſaid, *Thy Brother the Son of thy Mother*, without mention of the *Brother by the Father*, it is imply'd, that the one is nearer of kin than the other, in the Interpretation of the *Levitical* Law, this beſt anſwering the intention of this Law of *Moſes* which did oblige them not to conceal even their neareſt Relations, and in this Prohibition the Brother being the Son or ſuppoſed Son of the Father is included *a fortiori*.

Books

Books written by the ſame Author, and Printed for Walter Kettilby, *at the* Biſhops-Head *in St.* Pauls Church-yard.

1. ANimadverſions upon the Doctrine of Tranſubſtantiation, in a Sermon Preached before the Lord Mayor, *October 19th.* 1679.
2. A Diſcourſe of the Divine Omnipreſence and its Conſequences, in a Sermon Preached before the Honourable Society of *Lincolns-Inn* the firſt *Sunday* of *Michaelmas* Term, 1683.
3. A Sermon Preached before Sir *P. W.* 1681. with Additions. To which are annexed three Digreſſional Exercitations. I. Concerning the true time of our Saviours Paſſover. II. Concerning the Prohibition of the *Hebrew* Canon to the Ancient *Jews*. III. Concerning the *Jewiſh Tetragrammaton*, and the *Pythagorick Tetractys*. *Quarto.*
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5. A Letter of Reſolution to a Friend concerning the Marriage of *Couſin Germans*. *Octavo.*
6. A Reſolution of Three Matrimonial Caſes, *viz.* I. Whether it be lawful for a Man to Marry his diſceas'd Wives Siſters Daughter. II. Whether the Half-Blood makes Kindred. III. Whether ſuch a Marriage being made, it ought to be diſſolv'd or no.
7. *Boaz* and *Ruth*, A Diſquiſition upon *Deut.* 25. 5. concerning the the Brothers Propagating the Memory of his Elder-Brother deceas'd; in which the Antiquity, Reaſon and Circumſtances of the Law are Explain'd, the Miſtakes and Impoſitions of the *Jewiſh* Rabbins in this and other matters detected, and a fair way opened for a clearer underſtanding of the moſt obſcure and dark places in the Law of *Moſes*; together with a diſcovery of ſeveral things as well in the *Eaſtern* as *Roman* Antiquities, never yet explained or underſtood by any.
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